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No. 426

SUPREME COURT OF THE UNITED STATES

October Term, 1953

L. B. GLOVER, GEORGE FRANKLIN HUMPHRIES, ET AL.,

Petitioners,

vs.

W. P. H. McFADDIN, GULF OIL CORPORATION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND SUPPORTING BRIEF

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To The Honorable The Supreme Court Of The United States:

Your petitioners respectfully files and submits this as their petition for a writ of certiorari to review a decision and judgment of the United States Circuit Court of Appeals, Fifth Circuit, handed down June 5, 1953, affirming a decision and judgment of the United States District Court for the Eastern District of Texas, in favor of Respondents and against the Petitioners, (Glover v. McFaddin, D.C., 99 F. Supp 385; Id., D.C., 81 F. Supp. 426) wherein said District Court held (1) that the respondents were entitled to and were granted a summary judgment against the petitioners for the reason

that those under whom Petitioners claim title to the property involved, by inheritance, were not citizens or residents of what is now Texas at the time of Petitioners' ancestors death September 2, 1835, notwithstanding the fact that at the time of the death of Petitioners' ancestor, the said property was being held by one William English as agent for the original grantee, and the public records of the title so remained until 1861, at which time aliens and half blood inherited equally with citizens of Texas. (Page 26, Transcript of Record as to agency).

Judgment was rendered affirming the District Court by the United States Circuit Court of Appeals, Fifth Circuit, June 5, 1953. Appellants' Motion for Rehearing filed June 18, 1953, and was denied July 27, 1953., (Glover, et al. v. McFaddin, et al., 205 F. 2d, pages 1 et-seq.)

Pivotal Questions Presented

A) Whether or not, even though under the laws of Spain, Mexico, Coahuila and Texas heirs that were aliens could not inherit from an ancestor that was a citizen, would that inhibition extend to those alien heirs of deceased ancestors that died just a few days before this law was repealed, where the record discloses that the property so claimed was in the hands of the citizen owners' agent and so remained until 1860.

B) Whether or not the United States and Spanish Treaty of Amity signed by Spain on the 22nd day of February, 1819, and accepted by the United States on the 24th day of February 1819, providing in Article 11, that aliens to Spain who were subjects and citizens of the United States should stand on an equal footing with citizens and subjects of Spain insofar as property was concerned, the same as citizens of

Spain were protected in their property rights in the domain of the United States.

Mexico was a part of his Majesty's Spanish Government at the time, and why would not the statutory prohibition against aliens inheriting land in Coahuila and Texas not be abrogated and made void by said Treaty?

When has it ever been, since 1815, that a citizen of the United States was penalized and not protected in his inheritable and property rights in foreign governments while the aliens of other lands enjoyed the full protection of individual rights under our government?

C) Whether or not the fact that the Respondents recognized the title of half blood and accepted deeds for two-ninths (2/9) interest in said property from this class of (relatives) heirs forty years after Respondents had placed ficticious titles to said land and taken possession of same (in the absence and without the knowledge of the heirs to same) does not estop Respondents from denying the tenancy in common existing between Petitioners and Respondents. The Respondents being the creators of such tenancy in common.

D) Whether or not the tolling of the Statute of limitations from alleged facts (fraud, ignorance, deceit, forgeries, etc.) is a question of fact for a jury to pass on or for the Court to pass on in a Motion for Summary Judgment. Do stipulations as to actual facts of possession of property preclude Petitioners from the right to have a jury pass on whether or not the operation of the statute of limitations is not tolled by facts, acts and circumstances surrounding said possession?

Summary Statement of Matters Involved

This is a Civil Action, Petitioners claiming to be owners of seven-ninths (7/9) interest in a large acreage of land

embracing one of the oldest and most productive oil fields in Texas. Petitioners brought this suit to try title to said land, to secure possession thereof and for accounting for oil produced therefrom since 1901. Federal jurisdiction rests upon diversity of citizenship and amount involved.

The Appeal is from Summary Judgment rendered by the District Court in favor of Respondents, and affirmed by the United States Circuit Court of Appeals, Fifth Circuit.

The Petitioners allege that the land was originally granted to Pelham Humphries, a claimant from Tennessee, (U.S.A.) on the 14th day of February, 1835, by the State of Coahuila and Texas (Mexico) where the land was situated. That Pelham Humphries died intestate in what is now Texas, September 2, 1835, leaving no heirs in Mexico, but leaving his agent William English in charge of said land.

The public records remained as disclosing the existance of said agency until 1860.

That in 1900 (or thereabout) the Respondents purchased two-ninths (2/9) interest in said land from the sons of Elisha Humphries, Jr., who was a half brother of the original grantee Pelham Humphries.

That from 1860 until Respondents purchased the two-ninths (2/9) from the half blood nephews of Pelham Humphries in 1900, there were lots of ficticious deeds and conveyances placed on the records by the Respondents or those under whom they claim, for the purpose of encumbering and clouding the records, so that these Petitioners, as the rightful heirs of Pelham Humphries, would not, by casual or reasonable inquiry, find that they had an interest in said property.

It is stipulated in the records that the Respondents

are and have been in possession of said property and paid taxes on same for a sufficient number of years, with nothing else appearing, for their title to ripen into a merchantable title, but the Petitioners contend that there are facts, including fraud, forgeries, ignorance of the actual facts and lack of knowledge on the part of the Petitioners, that toll the entire statute of limitations. That the facts tolling of the running of the statute of limitations are issues of facts to be settled by a jury and have no place in the consideration of a Motion for Summary Judgment.

Pertinent Allegations

Petitioners in substance alleged: (1) That Pelham Humphries came to what is now Texas from the State of Tennessee with his wife who predeceased him, that taking advantage of the Colonization Laws of Mexico (Coahuila and Texas) he made application to the government for a league of the public land. That his application was approved and that he was accepted as a colonist and citizen, and a patent or grant for said league of land was issued to him. (Transcript of Record, pages 5, 6, 7, 8).

That Pelham Humphries died intestate in what is now Texas, September 2, 1835. (Transcript of Record, page 10). That at the time of Pelham Humphries death, William English was his recorded agent, and was in possession of said land as his agent, and so remained until December 26, 1860. (Transcript of Record, pages 25, 26, 27, 28).

That at the time of Pelham Humphries death his closest relatives were one half brother Elisha Humphries, Jr., and one whole brother William Humphries, and one whole sister Betsy Jane Humphries Foust, all of whom lived in Tennessee.

That Pelham Humphries' half brother, his whole

brother nor his sister ever knew Pelham Humphries owned any property in Texas, and as a result of the chaotic condition that existed at that time, the war for Texas Independence followed soon by the war between the United States and Mexico, lived until death without any knowledge as to what become of their brother Pelham Humphries, and naturally had no knowledge that he had left property in the hands of his agent in Texas.

That all the succeeding lineal generations of the brothers and sister of Pelham Humphries lived without any knowledge that Pelham Humphries had died intestate in Texas with no issue, leaving property in the hands and possession of an agent.

(2) That inasmuch as William English, as agent for Pelham Humphries, remained in possession of said land, under color of title, as such, on up to 1860, long after the inhibition of aliens having been removed, then his occupancy would inure to the benefit of the next of kin and heirs of Pelham Humphries that would inherit under the laws of 1860.

(3) That even though Pelham Humphries had died on September 2, 1835, and had left his land vacant with no one as his agent in possession of same, in the face of the statutory prohibition against aliens inheriting lands in what is now Texas, the Amity Treaty solemnly entered into between the United States Governmnt and His Majesty's Government of Spain, signed by the Government of Spain on the 22nd day of February, 1819, and by the United States Government the 24th of February, 1819, ratified by the United States Senate, February 22, 1821, made void under Provision 11, of said Treaty, any discrimination against aliens to Spain that were subjects of the Government of the United States of America owning or inheriting property in any Spanish

Territory. Article 11, of said Treaty absorbed, dissolved and repealed said prohibition, and this Treaty was in force September 2, 1835, and still is the law in 1953.

(4) That when the Respondents purchased two-ninths (2/9) interest in said land from the heirs of Elisha Humphries, Jr., the half brother of the original grantee, they recognized the law of 1860 as being the law that controlled the title and therefore estopped themselves from disclaiming tenancy in common and repudiating the common source of title.

Respondents Answer Generally

(1) That the alien laws of Coahuila and Texas (Mexico) that prohibited aliens from inheriting on September 2, 1835, applies to the whole chain of title, and that regardless of any circumstance or situation that might exist as to agency, or subsequent law or condition that might arise, the law of prohibition as to aliens inheriting from ancestors that were located in what is now Texas, prevented an alien taking lands of his ancestor, but at the same time a stranger could step in and take over, and cover up by ficticious deeds, affidavits of possession and other fraudulent documents beginning in 1860 and continuing until 1900, (40 years) and then stand back and defy the rightful owners to do any thing about it.

(2) That even though they purchased two-ninth (2/9) interest in said land in 1900 from the heirs of a half brother, that the law of Coahuila and Texas said could not inherit even had he been in Texas at the time of Pelham Humphries death, the Respondents say there could be no tenancy in common and no common source of title.

(3) That though it is a fact they have been in possession of said land sufficient length of time under the various statutes

of limitation of Texas, if said possession was legal, equitable and just, to ripen same into a good title, the Respondents say that nothing can toll the running of the statute of limitations against them, and regardless of the actual facts they are immune from the trouble of having a jury to say whether or not the facts warrant a finding that their possession is not justified by the evidence that would be produced in a trial on the merits of the case.

(4) That regardless of the Treaty between the United States and Spain of 1819, the Petitioners are penalized by the laws of Coahuila and Texas of 1835 and are forced to set idly by and reconcile themselves to the fact, that as a conquering nation their rights as citizens were disregarded, while the rights of the conquered were jealously guarded.

Reasons Relied Upon for the Allowance of the Writ

1.

This case presents questions of the first importance as to how far the prohibition against aliens inheriting property in what is now Texas can be construed to extend.

Though the District Court and the United States Circuit Court of Appeals both relied on and took as their guiding star and controlling precedent the case of Webb Heirs vs. Kirby Lumber Company, et al., (Texas Civil Appeals 107 S W 581) (Transcript of Record, page 383). Comparatively speaking there is no similarity in the two cases. In the Webb Heirs' case, Webb died and his administrator immediately transferred the property. In the case under consideration, Pelham Humphries died and left his personal agent in charge of said property (as his agent) from 1835 until 1860. All of the transactions in the Webb case were made under the Laws of Coahuila and Texas (Mexico) and the title never

was effected by the Laws of the Republic or State of Texas. The facts are no where near the same, and the Courts below overlooked that old Latin Maxim of Law that is older than our jurisprudence (and is still the law). . . . **MODICA CIVCUMSTANTIO FACTI JUSMUTAT . . . "A small circumstance (or fact) attending an act may change the law."**

2.

The holding of the Trial Court, sanctioned by the decision of the Circuit Court of Appeals, that notwithstanding the fact that the title to the land remained in Pelham Humphries (with William English as his agent in charge of same) from his death in 1835 until 1860, did not remove the prohibition against aliens being able to inherit. Both Courts completely ignored the leading authority (and precedent) based on identical facts, Russell's Heirs vs. Randolph, 11 (Texas Supreme Court) page 460.

3.

The decision of the Circuit Court of Appeals holding that the stipulations as to possession of the Respondents could be passed on by the Trial Court in its ministerial duty granted by, Rule 56, and judgment entered therein disregarding the universal law, that regardless of possession, or length of time the possessor has held same, it is a question "of fact" for a jury to pass on as to the reasons for the tolling of the statute of limitations if that issue be raised which has been throughout this entire record.

4.

The holding of the Court that the Respondents could deny the tenancy in common, which they created themselves, and could repudiate the common source of title.

5.

The complete ignoring of the Amity Treaty entered

into by the United States and Spain in February, 1819, and disregarding the Provisions of Article 11, of that Treaty which gave the citizens of the United States the same property rights in Spanish Territory that were in turn given Spanish subjects by the United States. (This question was not briefed before the District Court, or the Circuit Court of Appeals, but was orally argued before the Circuit Court of Appeals, and is a question that the Courts are inheriently bound to take judicial notice of).

6.

The decision of the Circuit Court of Appeals sustaining the holding of the District Court, that, there were no issues of fact to be tried by a jury, when in fact it appears from the Transcript of Record, and facts admitted and denied, that, the Petitioners are entitled to have the following issues submitted to a jury.

(a) When did Pelham Humphries, or his estate cease to own said land, at his death in 1835, or when it was attempted to be transferred 1860?

(b) Did the Respondents recognize that the heirs of Pelham Humphries were the owners of said land when they purchased from the nephews of Pelham Humphries by a half brother in 1900, two-ninth (2/9) interest in same, and thereby by their own acts make Petitioners and Respondents tenants in common, and therefore estop Respondents from denying the common source of title.

(c) Did the Respondents recognize such "tenancy in common" to the extent that "the Texas Statutes of Limitations never began to run" against these petitioners until shortly before the commencement of this suit?

(d) Notwithstanding the fact that the Respondents

have been in possession of said land and paid the taxes since 1884, is the statute of limitations tolled from running against these petitioners, by reason of fraud, latent and patent, forgeries on the part of the Respondents, or is the same prevented from running as the result of the ignorance of the fact of their rights, and the impossibility of the petitioners to do any thing about it.

In the interest of brevity (Rule 38, paragraph 2) Petitioners do not at this time set forth all the points which will be argued at the argument on the merits of this case should the writ be granted, nor all of the contentions in support of such points; but, in order to comply with the Rule of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari; (Gunning v. Cooley, 281 U.S. 90, 98), petitioners refer to and incorporat into this petition all of the matters in their statement of points on appeal (Record pages 364 to 366) in the Court of Appeals, with the same force and effect, as if herein set out in full.

WHEREFORE, your Petitioners, referring to the attached brief in support of the foregoing reasons for review, respectfully prays that Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete Transcript of the Record and all preceedings in the case entitled on its docket, L. B. Glover, et al. vs. W. P. H: McFaddin, et al., and numbered 14,041, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court and that your Petitioners may have such

other and further relief in the premises as to this Honorable Court may seem meet and just.

And your Petitioners will ever pray.

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BRIEF

1.

The Opinion of the Court Below

The opinion of the Honorable Circuit Court of Appeals is reported in Vol. 205, Fed. (2) pages 1, 2, 3, and appears in the Record at page 381 et-seq.

2.

Jurisdiction

1. The date of the Judgment to be reviewed is June 5, 1953. Petitioners filed a Motion for Rehearing in said Court on June 18, 1953. (Record 388). The Motion for Rehearing was (overruled) or denied without opinion July 27, 1953. (Record 394)

2. Federal jurisdiction rests upon the diversity of citizenship. (United States Circuit Court of Appeals Opinion, Transcript of Record, pages 381, 382).

3.

Statement of the Case

A sufficient statement is set forth in the petition under the heading, "Statement of Matters Involved."

4.

Specifications of Errors

For the sake of brevity, Petitioners adopt as their specifications of errors the points set forth in their petition under the heading, "Reasons for Granting a Writ."

Summary of Argument

POINT A. The fact that at the time the title to said land passed from Pelham Humphries and out of the hand of

his trustee or agent, the alien land inheritance laws of Mexico (Coahuila and Texas) had been repealed, and alien heirs as well as the half blood inherited as though they were citizens and residents of what is now Texas.

POINT B. The fact that the Courts below ignored and by-passed the Provision of Article 11, of the Treaty between the United States and Spain entered into in February, 1819, or long before Mexico became a Republic and Coahuila and Texas as Sovereign States existed.

POINT C. The fact that the Court considered the stipulations as to possession of the Respondents but, ignored the fundamental principal that "even though the Respondents were in possessions of said property, the Petitioners had alleged that there were certain facts, if answered affirmatively by a jury, that tolled the running of the statute of limitations, and that it is, and has been for all time, a question of fact for a jury to pass on, as to the tolling or suspending the running of the statute of limitations, and that this being an issue of fact, it could not be settled by the Court under the ministerial power granted the Court by Rule 56.

POINT D. That the Court ignored the fact that at the time the Respondents took deeds for two-ninth (2/9) interest in said land from the heirs of the half brother of the original grantee, the half blood inherited the same as the whole, and at that time, the Respondents by purchasing said two-ninths (2/9) interest in same, as they did, knew that the heirs of Pelham Humphries owned said property and that by accepting said deeds, estopped themselves from denying the common source of title and the tenancy in common.

POINT E. That the Courts below exceeded the authority granted by Rule 56, and encroached on the prerogative

of the jury, in that all contested factual issues were resolved in favor of the Respondents. That Rule 56, contemplates action by the Court only, where there are no factual issues to be decided by a jury.

POINT F. The Court judicially knew, that, if the land had been vacant land and had been left as such by the death of Pelham Humphries from 1835 until 1860, it would have escheated to the sovereign, and that during this time, under some of the governments that functioned, it was not necessary for the sovereign to take action as office found or escheat proceedings, but that the title would have reverted to the sovereign without any action on its part, had Pelham Humphries the original grantee from the sovereign died in 1835 without leaving some one as holding same for him. White vs. Halliday 11 Tex. 606.

The Respondents admitted in their oral argument before the United States Circuit Court of Appeals, (but qualified it by saying, "off the record") in response to a question by a member of that Honorable Court, that their only title from the sovereign was the source under which Petitioners claim, and that no where in the record was a disclosure that the title to this property ever went back to the sovereign after it was granted to Pelham Humphries. This admission, it seems to the writer, is sufficient to raise the presumption that the Respondents recognized the land as belonging to Pelham Humphries in 1860, at which time his aliens heirs could inherit.

ARGUMENT

Point A

At the time the title left Pelham Humphries the original grantee in 1860, even though it was held by an agent,

trustee or personal representative, the Court judicially knows that there was no prohibition preventing aliens inheriting property in what is now Texas.

The Opinion of the Circuit Court of Appeals cites, quotes and seems to rely on the case of Webb's Heirs vs. Kirby Lumber Company, (Tex. Civ. Appeals) 107 S W 581, for the foundation of its reasoning and holds that the Webb case is precisely as the case here, (Record 383, 384) but the facts in the Webb case are differnt from the facts in this case, in that, in the Webb case the administrator of Webb's estate sold the property during the Sovereignty of Mexico (Coahuila and Texas), and in after years, Webb's Heirs, who were aliens to Mexico, showed up and claimed the property, and of course the Court held that under the law as to aliens inheriting, the title had legally passed and the heirs had no right to the property, and could not maintain an action for the recovery of same.

The facts in all the cases cited in the opinion of the Honorable Circuit Court of Appeals are cases that occured spontaneous with the death of the original grantee.

The only case that the writer, after weeks, months and years of research has been able to find with facts similar or near this case, is the case of Russell's Heirs vs. Randolph, 11 Tex 460, and the fact in that case taken from the opinion of the Court, were, "the original grantee came to Texas in 1834 with the intention of making it his home if he liked the country,and after he arrived determined to make it his home, and resided here several months, during which time he applied for and received a grant of a league of land, as the head of a family consisting of a wife and three children, representing that he had brought his family with him, which was not the fact, and in 1835 returned to Maine, where he formerly resided and where his family was, with the intention of

bringing his family out to this country, but died the same year, and one of his children came to Texas and made a crop on the land in 1842 and remained here, held that if the original grantee "applied for and obtained the grant in good faith, went for his family and died before he could come back to Texas in pursuance of his grant, the title to the land was in his heirs."

Russell's Heirs vs. Randolph, 11 Tex 460

The title to the Russell land and even the possession of same surely lay dormant from 1835 until 1842, (seven years) long after Texas become an independent Republic. These facts come nearer being the same as the facts in this case than any other case of record that we have been able to discover, and the Supreme Court of Texas held that the heirs took the property by inheritance even though they were in Maine, and aliens to Texas at the time of their fathers death in 1835.

This is where that old Latin Maxim of Law . . . **MODICA CIVCUMSTANTIO FACTI JUSMUTAT . . . "A small circumstance (or fact) attending an act may change the law."**

There are not only small circumstances that conflict with the case at bar and the cases cited by the Honorable United States Circuit Court of Appeals in its Judgment, but there are large circumstances, "one in particular of twenty-five years time," 1835 when Pelham Humphries passed away and 1860 when his land was taken over by strangers. All the cases cited by the Court below, developed from title that left the grantee in 1835, Pelham Humphries' title never left him or his agent until 1860.

Point B

This Honorable Court judicially knows that: The United States Government, and the Government of Spain

entered into an Amity Treaty in February, 1819, and at that time Coahuila and Texas (Mexico) were subjects of his Majesty's Government of Spain, and that the law of nations would force Mexico, when it became a nation and later on the states of Coahuila and Texas and the Republic of Texas, to recognize that Treaty, as though the said territory was still subject to the Sovereignty of Spain, and this Court will likewise take judicial knowledge of the fact, that Article 11, of said Treaty imposed on the whole of the Spanish Sovereign, the right for subjects and citizens of the United States to stand on an equal footing and be secure in their property rights, and the right of inheritance, the same as the United States Government recognized and guaranteed to the citizens and subjects of Spain.

This Honorable Court further judicially knows that: Spanish citizens and subjects were guaranteed equal rights to own property, inherit and enjoy same as though they were citizens of the United States of America.

It is our studied opinion that no matter what the local laws of Mexico, Coahuila and Texas provided after the Treaty above referred to, (1819) as to aliens being deprived of the right of inheritance, said laws would be void and of no effect against a citizen and subject of the United States of America.

Point C, D, E and F

It has been the law from time immemorial that the statutes of limitation will not run in favor of one tenant in common in possession, against a co-tenant in common out of possession.

The possession of one tenant in common is the possession of all the tenants in common until some act is done by

the tenant in possession, putting the other tenants in common on notice that he claims adverse to his other joint tenants or tenants in common. This is so fundamental and so universally recognized as the law, that it seems useless to encumber the record with authorities sustaining this contention as is the fact or defense that said tenancy in common has been repudiated or terminated by the one in possession, is a factual issue for a jury to decide.

Wingo vs. Bridder, 124 S W 899

The Petitioners and Respondents entered into certain stipulations as to the irrefutable facts in this case soon after the case was instituted. "Among those stipulations it was agreed that the Respondents were at the present, and had been since 1884 in actual possession of said land, and that the Respondents had kept the taxes paid on same, and further, if the running of the statute of limitations were not tolled by facts alleged and proven by the Petitioners, then the Respondents possession had ripened into a merchantable title, and Petitioners could not recover."

The Courts below apparently overlooked or ignored the fact, that notwithstanding the Respondents have been in possession of this property, as the stipulation of facts indicates, still the fact of possession does not give title, until a jury has found as a fact that the statutes of limitation were not suspended or tolled by reason of facts alleged and offered to be proven by the Petitioners.

This is strictly an issue of fact, for a jury to settle, and has no place in a Motion for Summary Judgment under Rule 56.

Halstead vs. Grimm, 152 U S 412, 417
Bailey vs. Glover, 21 Wall 348
Treer vs. Clews, 115 US 537

If Rule 56, means what its language indicates, it would

seem that the District Court (Record 340, et-seq) forgot or overlooked all the disputed facts, and that the United States Circuit Court of Appeals in its review and affirmation of the District Court's Judgment, (Record 381) (205 Fed. 2nd. 1, et-seq) likewise seemed to overlook all the controverted facts, and take it for granted that all issues of fact had been resolved in favor of the Respondents, notwithstanding the disputed issues that appear from the beginning of the Record to the end thereof.

Based on all the factual record and the fundamental organic statutory, general and procedural law of the land, the Petitioners respectfully believe that they are entitled to the relief prayed for herein.

Respectfully Submitted

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I HEREBY CERTIFY that copies of this petition have been served on all the attorneys for the respondents as follows:

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By depositing a copy in the United States mails with postage paid, properly addressed to them.

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NOV 20 1953

HAROLD B. WILLEY, Cler

No. 426

IN THE

Supreme Court of the United States

L. B. GLOVER, ET AL., *Petitioners and Appellants Below*

v.

W. P. H. McFADDIN, ET AL.,
Respondents and Appellees Below

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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No. 426

IN THE

Supreme Court of the United States

L. B. GLOVER, ET AL., *Petitioners and Appellants Below*

v.

W. P. H. MCFADDIN, ET AL.,
Respondents and Appellees Below

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

MAY IT PLEASE THE COURT:

The opinion of the Court of Appeals accurately states the facts on which the case is based and correctly decided the law applicable thereto. 205 Fed. 2d 1, (Record 380-381). The circumstances do not warrant an extended reply for the petition not only fails to show prima facie a case for the issuance of a writ, but does definitely show that it is frivolous upon its face and repeatedly misquotes the record in the court below.

Jurisdiction

No grounds for jurisdiction of this court is alleged in the petition for certiorari.

This suit involves a controversy between private parties

over the title to land in Texas. It is clear from the opinion of the Court of Appeals, as well as from the petition for certiorari, that the decision of the Court does not involve principles, the application of which is of wide public or governmental interest. The decision involves a question of concern only to the immediate parties, a question of no importance to the public. The judgment of the Court of Appeals is correct and is not in conflict with any other decision so as to warrant further review of the case by this court.

Petitioners Misquote the Record

Throughout the petition and the brief in support thereof, statements are repeatedly made "That Pelham Humphries died intestate in what is now Texas, Sept. 2, 1835, leaving no heirs in Mexico, *but leaving his agent William English in charge of said land.*"* (Petition, pgs. 2, 4, 5, 6, 8, 15, 17.). Pages 25, 26 and 27 of the Transcript are cited by Petitioners as authority for the statement that Pelham Humphries left his agent William English in charge of said land.

The Transcript pages 25, 26 and 27 show that petitioners, instead of claiming that English was an agent of Pelham Humphries, *deny* that William English was agent for Pelham Humphries, and allege in their pleading that the instruments involving William English were "manufactured," "forged" and "fraudulent." After quoting the instrument in question in their pleading petitioners alleged "That the said document aforesaid was not executed by Pelham Humphries but was 'manufactured' by the conspirators aforesaid," (Tr. 26-27) and that "the said document was not executed by Pelham Humphries nor by Pelham Humphries under the assumed name of William Humphries,

* Emphasis ours.

nor by William Humphries his brother, but by rank conspirators, and *that such instrument is a rank forgery,** and was executed for the express purpose of asserting a sort of pretended claim on said land aforesaid, and the conspirators proceeded to and did create a sort of pretended claim on said land. That although this instrument was purportedly executed by Pelham Humphries after his death, it was never recorded until December 26, 1860, or twenty-four years later." (Tr. 27)

In reference to the treaty of 1819, with Spain, upon which petitioners seem to lay great stress, it was nowhere mentioned in trial court nor in the brief in the Court of Appeals. The first mention thereof was made in oral argument before the Court of Appeals. Suffice it to say that actually the treaty with Spain has absolutely nothing whatsoever to do with the issues involved since Mexico became a sovereign nation by the Cordova Treaty of 1821, between Mexico and Spain.

Questions Presented

Whether or not the Court of Appeals erred in affirming the judgment of the trial court and its holding the petitioners are not entitled to the land involved, because the persons under whom they claim were aliens to the Republic of Mexico and as such could not inherit same.

Argument

At the risk of unnecessarily lengthening this reply and unduly burdening the court, we respectfully submit that none of the so-called "Pivotal Issues Presented" of petitioners should be decided favorably to petitioners, as will hereinafter be demonstrated.

---

* Emphasis ours.

Petitioners' Pivotal Issues Are Without Merit

A. The Court of Appeals correctly decided that the persons under whom petitioners claim were aliens to the Republic of Mexico, and therefore could not inherit the land in controversy under the Mexican law then in full force and effect. MIDDLETON v. MCGREW, 64 U.S. (23 Howard) 45, 16 L. Ed. 403; WEBB HEIRS v. KIRBY LUMBER CO. (Tex. Civ. App.), 107 S.W. 581; HALLIMAN v. PEEBLES, 1 Tex. 673; YATES v. IAMS, 10 Tex. 168; HORNSBY v. BACON, 20 Tex. 556; BLYTHE v. EASTERLING, 20 Tex. 565; DOUTHIT v. SOUTHERN, 155 S.W. 315.

Petitioners attempt to distinguish the cases cited above from the case at bar on the theory that on the date of the death of the original grantor, Pelham Humphries, on September 2, 1835, the land was in possession of his agent, one William English, and therefore the property would not escheat to the Mexican Government. Of course, it is a fundamental proposition of law that even if William English were the agent of Pelham Humphries this agency would terminate upon the death of the principal, Pelham Humphries. However, as pointed out elsewhere herein, the petitioners did not, until oral argument in the Court of Appeals, ever claim that William English was an agent of Pelham Humphries, but to the contrary repeatedly attempted by their pleadings to avoid the effect of the instruments *deeding* the land in controversy to William English. Their pleadings alleged that the instruments in question were manufactured, forged and formed part of a conspiracy to deprive petitioners' ancestors of title to the land in controversy. (Tr. 25, 26 and 27)

B. The treaty of Amity between the United States and Spain, on the 22nd day of February, 1819, has no application to any issue involved in this lawsuit. Mexico won her independence from Spain in 1821, and became a sovereign

nation; thereafter citizens of Mexico were no longer Spaniards, but Mexicans, and regardless of the provisions of the amity treaty between the United States and Spain in 1819, such provisions could not in any manner affect the rights of citizens of the Republic of Mexico, which had been in existence some fourteen years prior to the alleged death of Pelham Humphries. Furthermore, this question was not raised in the court below.

C. There is no merit in this issue because even if respondents had purchased an undivided 2/9ths interest in the property from the heirs of Elisha V. Humphries, Jr., such purchase would not make respondents tenants in common with the petitioners, because under the Mexican laws of tenancy in force at Pelham Humphries' death, the kindred of the whole blood took to the exclusion of the kindred of the half blood. WARDLOW v. MILLER, 69 Tex. 398; FRANKLIN v. PIPER, 23 S.W. 942.

Petitioners' pleadings alleged in many places that Elisha V. Humphries, Jr. was a half brother of Pelham Humphries and that upon the death of Pelham Humphries there survived him William Humphries and Mary Jane Humphries, brothers and sisters of the whole blood, and Elisha V. Humphries of the half blood.

D. This question has no merit because unless and until petitioners showed some title in themselves it was unnecessary for respondents to prove anything under Texas rules of pleadings. Petitioners refused to recognize the fundamental principles of trying titles to lands in Texas—that the plaintiff must recover, if at all, upon the strength of his own title and not upon the weakness of his adversary's.

In connection with respondents' issue on limitation, we are constrained to point out that petitioners have admitted that respondents were in possession of the land and premises from 1860 to the date of the trial, and would be entitled

to the land under the limitation statutes of the State of Texas, unless such statutes were tolled by facts alleging fraud, ignorance, etc. While the Court of Appeals did not pass upon this issue, since it was not necessary to a determination of the controversy, it is clearly demonstrated in respondents' brief in the Court of Appeals, Point III, that respondents have in law and in fact perfected title to the land in controversy under the Texas statutes of limitation.

Conclusion

The petition for certiorari should be denied.

Respectfully submitted,

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Copy of this brief in opposition was on the 19 day of November, A. D. 1953, mailed to E. Garland Brown and J. B. Ator, Corpus Christi, Texas, and to Lewis B. Perkins, Washington, D. C., Attorneys for petitioner.

WILL E. ORGAIN

15

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No. 426

SUPREME COURT OF THE UNITED STATES

October Term, 1953

L. B. GLOVER, GEORGE FRANKLIN HUMPHRIES, ET AL.,

Petitioners,

vs.

W. P. H. McFADDIN, GULF OIL CORPORATION, ET AL.,

Respondents.

PETITIONERS' MOTION FOR REHEARING ON THEIR PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To The Honorable The Supreme Court Of The United States:

Comes now the petitioners in the above styled and numbered cause and respectfully files this, their Motion for Rehearing in said cause, this Honorable Court having denied petitioners' petition for certiorari on November 30, 1953, and as grounds for such motion would respectfully show the Court:

1.

This Court has jurisdiction of this cause by reason of the fact, that there is admittedly diversity of citizenship and there is also a question of the construction and intention of the

contracting parties of a Treaty between the United States of America and the Government of Spain, that was entered into between the contracting parties in the year 1819, at which time the after established Government of Mexico was a part of the Government of Spain.

Remarks and Reasoning

a. In denying the claim of the petitioners to the land sued for, the Court penalizes the citizen of America, and extends to the foreign conquered foe of America, a privilege beyond the rights of its own citizens.

b. In denying the right of citizens of the United States to have the controverted factual issues of this case be passed on by a jury, the Court virtually abrogates and abolishes the right of trial by jury, and adopts the premis that the adopted Rule 56 when invoked by motion gives the Court exclusive power to pass on the facts and reverses all the precedent heretofore followed by the Courts, that Rule 56 only gave the Court ministerial power to enter judgment where there were no controverted facts at issue.

c. In denying the right of the petitioners to recover for the reason that aliens to Mexico could not inherit under the facts alleged in this case, the Court held for naught the land laws of Mexico, Coahuila and Texas, which required that all titles be recorded in the public records, and likewise ignored and abolished the law of agency, (that was provided for in the laws of Mexico, Coahuila and Texas) which has been up-to-now the law of all civilized nations "since the memory of man runneth not to the contrary."

d. In affirming the judgments of the trial Court and the United States Circuit Court of Appeals and ignoring the Treaty between the United States and Spain entered into in 1819, establishes a precedent that even though Treaties between the United States and other nations are superior to the binding solemn effect of the Constitution of the United States, nevertheless a statutory inhibition as to aliens inheriting enacted by a minor subject and subdivision of a Treaty by the Supreme Sovereign takes precedence and is the supreme law governing the property rights of the citizens of the contracting sovereigns, and supercedes the Constitution of the United States and a solemn Treaty of the United States and the Government of Spain.

Conclusion

This suit insofar as the property rights of individuals and citizens of the United States are concerned, is one of the most important that has ever arisen in the United States. The title to lots of property situated in the vast territory covered by the Republic of Texas, and now the State of Texas, is affected by the final decision of this Court. In many instances, as is this case, exploiters and financial tycoons have wrongfully entered on the property and premises of those that have year in and year out, since the formation of this government, been the silent factors in building this nation to its greatness, and if Rule 56 permits the throwing aside of all controverted issues of fact, and entering judgment, as if all the facts were resolved against the citizen in favor of the trespasser, what hope can be left for the inherient property rights of the American citizen insofar as he is protected by the law of the land.

Wherefore, petitioners most respectfully pray that on rehearing this Honorable Court set aside its denial of the peti-

tion for certiorari; that it grant its writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit as prayed for in said petition for certiorari; and upon such hearing that the judgment below be reversed and judgment be entered remanding the case to the United States District Court of the Eastern District of Texas for trial on the controverted issues of facts that are joined in said case.

Respectfully Submitted

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Counsel for Petitioners

I, E. Garland Brown, counsel for petitioners, certify that in my opinion the foregoing Motion for Rehearing is well founded in law and that the same is proper to be presented and filed, and is not interposed for delay.

E. Garland Brown

E. GARLAND BROWN

Counsel for Petitioners

A true copy of above motion has been delivered to counsel for the respondents.

E. Garland Brown

E. GARLAND BROWN